IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE ELEVENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 13930 of 2001

Between:

1 M.Narayana Swamy son of Rajappa, Attender,
Live Stock Unit, Animal Husbandry Department, Pedda Kota Kunta,
Anantapur District.
2 G.Rami Reddy son of G.Hanumantha Reddy, Attender
Live Stock Unit, Vajrakarur, Anantapur District.
3 P.Thippanna son of Narsanna, Attender,
Live Stock Unit, Yerragutta, Anantapur District.
4 P.Laxmi Reddy son of P.Narasimha Reddy, Attender,
Live Stock Unit, Amudala, Anantapur District.
5 Y.Konda Reddy son of Konda Reddy, Attender,
Sheep Farm, Sidda Ramapuram, Anantapur District.
6 T.Sanjappa son of Akkulappa, Attender,
Sheep Farm, Lepakshi, Ananthapur District.

..... PETITIONERS

AND

1 The Director, Animal Husbandry Department A.P. V.S.R. complex,
Santhinagar, Hyderabad.
2 The Joint Director of Animal Husbandry, Anantapur, Anantapur District.
3 The Assistant Director of Animal Husbandry, Uravakonda, Ananthapur

District.
4 The Assistant Director of Animal Husbandry, RMC. Sidda Ramapuram,
Anantapuram District.
5 The Assistant Director of Animal Husbandry, Penukonda, Anantapur District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more in the nature of Writ of Mandamus declaring the order in O.A.No.5397/2000 dated.6/02/2001 of the A.P Administrative Tribunal, Confirming the order issued by the Respondent No.1 in proceeding No. 10737-BV-B4-99 dated: 14/07/2000 and the consequential proceedings of the Respondent NO.2 in Roc No.3278/B2/2000 dated: 26/08/2000 as illegal, arbitrary and violative of Article 14, 16 and 21 of the constitution of India apart from Violative principles of natural justice and consequently direct the Respondent to continue the petitioners are regular Attenders in their respective places working prior to the issuance of impugned proceeding.

Counsel for the Petitioners: MR.C.V.NAGARJUNA REDDY

Counsel for the Respondents: GP FOR SERVICES I

The Court made the following:

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ORAL ORDER: (per GB.J.)

The Writ Petition is filed assailing the order passed by A.P. Administrative Tribunal (for short Tribunal) in O.A.No.5397 of 2000, dated 6.2.2001.

2. The matter has a long tail with a small tuft. The petitioners are six in number along with others were initially appointed as casual labour in the Animal Husbandry Department during the year 1975-76. Since they have been continuing as casual labour in the Animal Husbandry Department for a considerable length of time, it appears that the Union of the casual labour working in the Animal Husbandry Department made a representation to the authorities to regularize their services in the cadre of casual labour, who had put in atleast ten years of service. Accordingly the matter was considered by the Government and issued G.O.RT.No.1276, Forests, Animal Husbandry & Fisheries (AH.II) Department, dated 15.12.1986 directing to appoint them in the regular posts of Attenders even by relaxing the age and educational qualifications. In pursuance of the said G.O., the matter was considered and since at the relevant time there were no regular posts of Attenders, they were appointed as Attenders in leave vacancies and accordingly orders were issued by the Joint Director of Animal Husbandry Department on 17.4.1989 appointing them as Attenders in leave vacancies after relaxing the educational qualifications. Thereafter, when the regular vacancies arose on 30.6.1991, the authorities appointed them in regular posts as Attenders by the proceedings dated 30.6.1991. However, after nearly six months, the Joint Director of Animal Husbandry Department issued proceedings on 8.11.1991 cancelling their appointments made on 30.6.1991. Assailing those orders, the petitioners filed O.A.No.46523 of 1997 and batch and the said O.As., were disposed of by the Tribunal with a direction to the Government to reconsider the matter in the wake of G.O.Ms.No.212, Finance and Planning Department, dated 22.4.1994 and other relevant material. Thereafter the matter was considered and fresh orders were passed on 14.7.2000 rejecting the claim of the petitioners for

appointment as Attenders. Aggrieved by the said order, the petitioners filed O.A.No.5397 of 2000 and the same was disposed of by the Tribunal on 6.2.2001 directing the authorities to consider their cases for regularization keeping in view their long service. Against the said order, the present Writ Petition has been filed.

3. It is also brought on record that consequent on the cancellation of regular appointments on 8.11.1991, they were directed to work as casual labour and now it is stated by the learned counsel for the petitioners that they did work as casual labour at a very low wages of Rs.8/- per day up to the year 2000 and thereafter they were disengaged. Be that as it may, that is not relevant for consideration of this matter.

4. The learned counsel for the petitioners Mr.C.V.Nagarjuna Reddy, vehemently submits that the very approach of the Tribunal and the Department was illegal and contrary to the G.O. issued by the Government. He also submits that G.O.Ms.No.212, dated 22.4.1994 is wholly irrelevant for deciding the matter inasmuch as the Government has issued a specific G.O., viz., G.O.Rt.No.1276, dated 15.12.1986 to regularize the services of the casual labour and appoint them as Attenders on completion of ten years of service. The learned counsel also would submit in this regard that if the cut off date is to be taken as 15.12.1986, all the petitioners have completed ten years of service, taking into consideration the proceedings issued by the Joint Director, Animal Husbandry Department, dated 17.4.1989. Even otherwise since no cut off date is mentioned, they should be treated as and when they complete ten years of service and that was completed by them long long back and therefore on both the grounds the petitioners should be appointed on regular basis. Though they had put in long years of service and are relentlessly fighting for their cause, still they could not achieve their goal, which was intended to be conferred by virtue of G.O.Rt.No.1276, dated 15.12.1986. Thus he submits that the order of the Tribunal only directing the authorities is illegal and the Tribunal ought to have given positive directions to appoint them as Attenders more especially when the vacancies were there at the relevant time in 1991.

5. On the other hand the learned Government Pleader for Services-I submits that the petitioners are not entitled for regularization as they did not fulfill the criteria laid down in G.O.Rt.No.1276, dated. 15.12.1986 or G.O.Ms.No.212,

dated 22.4.1994 and therefore the orders passed by the authorities as affirmed by the Tribunal are quite legal and valid and no interference is called for.

6. The learned Government Pleader, however, made a faint suggestion before this Court that the cases of the petitioners have to be considered in pursuance of G.O.Ms.No.212, dated 22.4.1994 as they worked as casual labour during that period, but G.O.Rt.No.1276, dated 15.12.1986 would not be applicable. But this contention cannot be allowed at this belated stage as in the previous litigation when the matter was considered by the Tribunal on two occasions, this contention was not raised and therefore we are not inclined to permit raise such a contention before this Court.

7. The issue that arises for consideration is as to whether the order of the Tribunal is sustainable in law.

8. The facts as narrated above would clearly indicate that the petitioners were appointed as casual labour in 1975 and 1976. But we are unable to appreciate the observation made by the Tribunal that they appears to have been appointed during 1977 to 1982. When a specific order was issued by the Joint Director on 17.4.1989 when they were sought to be appointed on regular basis as Attenders, but for want of regular vacancies they were appointed on leave vacancies and the date of their first appointment was also clearly mentioned therein. Therefore, there is no reason why that date should not be taken into consideration and if that date is not correct, appropriate proceedings ought to have been issued changing the date, but no such proceedings are produced before this Court. Even though the reference was made in the order dated 8.11.1991 terminating the services of the petitioners, correct calculations were not made for doing such exercise, we do not understand the basis for coming to such conclusion in the wake of the definite date recorded in the proceedings dated 17.4.1989 issued by the Joint Director, Animal Husbandry Department. Moreover, when the date of appointment was sought to be changed so as to keep them out of the purview of G.O.Rt.No.1276, dated 15.12.1986, the petitioners ought to have given a notice to that effect, but in the absence of such notice, we find that the date of appointment as mentioned by the Joint Director, Animal Husbandry has to be accepted without any reservations. Under those circumstances, the matter has to considered with reference to

G.O.Rt.No.1276, dated 15.12.1986.

9. In the initial litigation in O.A.No.46523 of 1997 and batch, the Tribunal passed the following directions:

> "We, therefore, dispose of this OA with a direction to the respondents to re-examine the cases of theapplicants for absorption as Attenders with reference to the dates on which they have completed 10 years of service as casual labourers in terms of G.O.Rt.No.1276, Forests, Animal Husbandry and Fisheries Department, dated 15.12.1988 or any other Government orders regarding absorption of casual labourers who worked in Government Lice Stock Farm, Reddipalli. If the applicants are not entitled for absorption as Attenders in terms of G.O.Rt.No.1276, Forests, Animal Husbandry and Fisheries Department, dated 15.12.1988, we direct the respondents to examine the cases of the applicants for regularization of their services as Attenders in terms of G.O.Ms.No.212, Finance and Planning, dated 22.4.1994 and pass appropriate orders. The above, we direct the respondents to examine the cases of the applicants for regularization of their services as Attenders in terms of G.O.Ms.No.212, Finance and Planning, dated 22.4.1994 and pass appropriate orders. The above exercise should be completed within a period of 3 months from the date of receipt of this order. The O.As., are accordingly disposed of. No costs".

10. When the matter was considered and rejected for the second time, the petitioners approached the Tribunal by filing O.A.No.5397 of 2000 and the Tribunal disposed of the same on 6.2.2001 with the following directions:

> "Keeping in view the facts and circumstances of the case and also keeping in view the observations of the Hon'ble Supreme Court and High Court in the cases mentioned above, we consider it appropriate to direct the respondents to consider the cases of the applicants for regularization of their services if necessary by relaxing the relevant rules while keeping in view the observations made by the Hon'ble Supreme Court and Hon'ble High Court in the decisions mentioned above".

11. The only issue that arises for consideration is whether the petitioners fall within the criteria laid down in G.O.Rt.No.1276, dated 15.12.1986.

12. G.O.Rt.No.1276, dated 15.12.1986 is extracted below:

"ORDER:

In his letters cited, the Director of Animal Husbandry was submitted proposals to permit him to absorb the Casual Labourers working in various Farms for more than ten years in the vacant posts of Attenders in the Department by duly relaxing the relevant rules of the Andhra Pradesh Last Grade Service Rules.

The Government have carefully examined the above proposals. In view of the orders issued in G.O.Ms.No.38, Finance and Planning (FW.PRC.VI) Department, dated 1.2.1980 converting all the contingent posts existing for more than ten years into regular Government posts in the Last Grade Service in Pay Scale of Rs.290-5-345-10-425 and also in view of the clarifications issued in Government Memo No.422/SM/80-9, dated 8.5.1981 and Memo No.50/SM/84-2, dated 31.12.1984 and Memo No.846/SM/80 dated 23.2.1985 the Government permit the Director of Animal Husbandry to fill up the vacant post of Attenders by the contingent workers working for more than 10 years in various Farms under control of the Animal Husbandry Department. As the Head of Department is competent to relax the Andhra Pradesh Last Grade Service Rules, the Director of Animal Husbandry is requested to appoint the Casual Labourers working in the Department as Attenders in the vacant posts by relaxing the relevant rules of the Andhra Pradesh Last Grade Service Rules.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

K.JAYABHARATHA REDDY,

SECRETARY TO GOVERNMENT"

13. From a perusal of the aforesaid G.O. it is clear that if an employee working in the Department for more than 10 years, he is entitled to be appointed as Attender and to that extent the post of Attenders were deemed to have been created in the proceedings issued by the Joint Director, dated 17.4.1989 in the time scale of Rs.740-15-950-20-1150. We find it appropriate to extract the entire proceedings of the Joint Director, which reads thus—

"In the reference cited, the age and educational qualifications were relaxed in favour of Casual Labourers working at Ex-Government Livestock Farm, Reddipalli, now changed as Fodder Seed Multiplication Unit, Reddipalli for appointment as regular Attenders but they could not be appointed for want of vacancies.

In view of vacancies arisen, due to selection of Departmental Attenders for Veterinary Assistants Training Course, the following daily wage workers of Ex-Government Livestock Farm, Reiddipalli (now Fodder Seed Multiplication Unit) are hereby temporarily appointed as Attenders in the time scale of Rs.740-15-950-20-1150 and posted to the institutions noted against each.

Sl.No.	Name	Date of first appointment	Institution to which posted
1	Sri B.Konda Reddy, s/o. Yella Reddy	6.6.1975(B.C-D)	CSCC Reddypalli in the post of messenger. Post converted to attender post and vacant.
2	M.Narayanaswamy,S/o. Rajappa	6.10.1975(S.C.)	Vety.Hospital,Singanamala.
3	C.Rami Reddy, S/o.C.Hanumantha Reddy.	5.1.1976(B.C.-D)	O/o. Assistant Director (A.H.) Anantapur.
4	P.Thippanna, s/o. Narsanna	6.6.1976(B.C.-A)	Vety.Hospital, Tadipatri vice Sri B.Katamaiah, Attender, transferred.
5	P.Lakshmi Reddy, s/o. Narasimha Reddy.	6.6.1976 (B.C.-D)	O/o. Joint Director (AH), Anantapur vice Sri B.Ramachandr Attender transferred.
6	Y.Konda Reddy, s/o. Konda Reddy.	13.6.1976 (B.C.-D)	L.S.U. Nuthimadugu
7	T.Sanjappa, s/o. Akkulappa.	1.7.1976 (B.C.-A)	L.S.U. Kodigenahalli
8	P.Laxminarayana, s/o. P.Sreeramulu.	15.7.1976 (B.C-B)	L.S.U. Pamidi

14. When the competent authority was allowed to grant relaxation and when once relaxation is granted, it cannot now be contended that they did not possess requisite qualification. Even otherwise they had completed more than 10 years of service working in the same post and therefore that contention will pale into insignificance. Hence, taking into consideration the proceedings dated 17.4.1989, the date of appointment, and with reference to G.O.Rt.No.1276, dated 15.12.1986, all the petitioners have completed more than ten years of service as on the date of issuance of the said G.O. In such a situation it cannot be said that the petitioners are not entitled for appointment as Attenders.

15. Though the learned counsel for the petitioners tried to trace out the

contention that even assuming that they have not completed ten years of service, still they had completed the eligible service as on the date when the appointment order sought to be cancelled on 8.11.1991. But when once we find that they had completed ten years of service with reference to G.O.Rt.No.1276, dated 15.12.1986, we need not go into the other aspects relating to alternative contention raised by the learned counsel for the petitioners. The Tribunal did not consider this aspect either in the earlier proceedings or in the latter O.A. Under those circumstances, we find that the Tribunal ought to have granted a positive direction instead of directing the authorities to consider their case again.

16. The learned counsel for the petitioners however tried to rely on the decision of the Supreme Court reported in J.C.YADAV AND OTHERS vs. STATE OF HARAYANA AND OTHERS[1] and contended that even when experience is lacking when appointment is made, without there being sufficient experience the Supreme Court did not set aside such an appointment. In this regard para 12 of the Judgment is relevant, which is extracted below:

> "On behalf of the appellants an alternative submission was made that since the appellants had already completed eight years' of service in Class II service during the pendency of the writ petition their appointment stood regularized. To support this submission reliance was placed on the decision of this Court in Ram Sarup v. State of Harayana ((1979) 1 SCC 168). In that case appointment to the post of Labour-cum-Conciliation Officer was made in breach of Rule 4 clause (I) of the Punjab Labour Service class I and II Rules, 1955 as Ram Sarup did not possess five years' experience, required by sub-clause (I) of Rule 4. In spite of that he had been appointed to the post of Labour-cum-Conciliation Officer. Subsequently, Ram Sarup was reverted on the ground that he was not qualified to be appointed as a Labour-cum-Conciliation Officer as he did not possess the minimum qualification of length of service. This Court held that the appointment of Ram Sarup made in breach of Rules was irregular, but not wholly void and since Ram Sarup had completed five years of experience of working of labour laws before his reversion, his appointment to the post of Labour-cum-Conciliation Officer stood regularized with effect from the date he completed five years of service. On these findings order of reversion was set aside by this Court. Undisputably, the appellants completed eight years of service before January 15, 1980, the date on which the Division Bench of the High Court set aside their promotions. In view of the principles laid down in *Ram*

Sarup case the appellants' appointment, even if irregular, stood regularized on the date they completed eight years of their service and thereafter their promotions could not be set aside".

But the said Judgment is not applicable to the facts of the present case inasmuch we have already held that the petitioners have completed requisite service for appointment as Attenders by virtue of G.O.Rt.No.1276, dated 15.12.1986.

17. Accordingly the order of the Tribunal is set aside. Consequently the order of cancellation passed by the Joint Director, Animal Husbandry, Anantapur, dated 8.11.1991 also shall stand set aside. The petitioners are directed to be reinstated within a period of four (04) weeks from the date of receipt of a copy of this order. We make it clear that the petitioners are entitled to be treated as if they are regularly appointed by proceedings dated 8.11.1991 with all consequential benefits including continuity of service and notional fixation of pay etc., and they are entitled for physical monetary benefits with effect from the date of filing of O.A.No.5397 of 2000.

18. Accordingly the Writ Petition is allowed. No costs.

(G.BIKSHAPATHY, J.)

11th March, 2005.

(P.S.NARAYANA, J.)

SSR

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Director, Animal Husbandry Department A.P. V.S.R. complex, Santhinagar, Hyderabad.
2 The Joint Director of Animal Husbandry, Anantapur, Anantapur District.
3 The Assistant Director of Animal Husbandry, Uravakonda, Ananthapur

District.
4 The Assistant Director of Animal Husbandry, RMC. Sidda Ramapuram, Anantapuram District.
5 The Assistant Director of Animal Husbandry, Penukonda, Anantapur District.

6 The Registrar, A.P. Administrative Tribunal, Hyderabad.

7 2 CCs to G.P. for Services-I, High Court of A.P. Hyderabad. (OUT)

8 2 CD copies

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